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CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

Report of the Secretary-General

Addendum

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GREECE

[Original: French]

[9 September 1992]

1. The Government of Greece believes that the draft articles on jurisdictional immunities of States and their property, adopted by the International Law Commission at its forty-third session, are on the right track because they are based on the so-called "relative immunity" option.

2. In this connection, the Government of Greece would like to express its appreciation to the Commission for the remarkable work it has carried out, and also to the special rapporteurs and particularly Mr. Sompong Sucharitkul of Thailand, who made a decisive contribution to the drafting of the articles.

3. In view of the importance of the draft articles, the Government of Greece believes that it would be desirable to convene an international conference that would have the task of converting the draft prepared by the International Law Commission into an international convention.

4. Needless to say, the Government of Greece reserves the right to make specific comments on the draft articles, both in the Sixth Committee and at the conference, if it is decided to convene such a conference.

MEXICO

[Original: Spanish]

[15 September 1992]

1. The Government of Mexico welcomes the adoption by the International Law Commission of the draft articles in question.

2. Although the Government of Mexico expressed some reservations during the forty-sixth session of the General Assembly as to the desirability of seeking to achieve immediate results, it is none the less fully prepared to participate in the Working Group to be established to review the draft articles. The following are specific comments on some articles of special interest to the Government of Mexico.

3. In article 7, on express consent to exercise of jurisdiction, it is recommended that the term "express declaration" be used in paragraph 1 (c).

4. In article 12, on personal injuries and damage to property, it is suggested that the following exception be included: "Immunity would be respected if the State which was the author of the act or omission was fulfilling an international agreement, or if the State which was the author of the act or omission was performing diplomatic functions."

5. Moreover, article 13, on ownership, possession and use of property, should be subject to the exception that immunity of property which is covered by immunity of property* must be respected; in particular, the article should be drafted in the same manner as article 16, paragraph 7, which refers to a certificate for ships signed by the competent authority of the State concerned.

6. With regard to article 14, on intellectual and industrial property, the scope of the article should be limited to commercial purposes.

7. With regard to article 17, on the effect of an arbitration agreement, it would be appropriate to add the words "in accordance with its domestic laws" after the phrase "If a State", since not all domestic legal systems grant to foreign nationals the same access to the courts as is available to the State's own nationals.

8. In article 18, on State immunity from measures of constraint, it is suggested that the text be brought into line with article 16, paragraph 7, i.e., the competent authority of the State concerned should issue a certificate earmarking property which might be subject to measures of constraint.

9. Also in article 18, it is suggested that the term "express declaration" be added to paragraph 1 (a) (iii).

10. It would be advisable to delete article 19, paragraph 2, since it is unlikely that a State would waive immunity for the specific categories of property envisaged in this article. Furthermore, State immunity from measures of execution or constraint, as they have been called, should apply to the property of a State situated within its own territory or within the jurisdiction of the forum State or a third State, or even in areas beyond national jurisdiction.

11. Accordingly, it is suggested that the inclusion of article 23 be reconsidered, unless the purpose for which the property is used is consistent with the wording of article 16, paragraph 7.

12. With regard to article 21, default judgement has no juridical basis in the international practice of States; accordingly, the article should be deleted.

13. Lastly, with regard to article 22, on privileges and immunities during court proceedings, such privileges and immunities should apply to any document which a State, in accordance with its laws, regulations and policies, deems to be exempt from disclosure, subject to a determination in that regard by a competent authority on the basis of article 16, paragraph 7.

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* Translator's Note: Words appear to be missing in the original.

POLAND

[Original: English]

[20 August 1992]

I. General comments

1. The Government of Poland accepts in principle the conception of the "limited jurisdictional immunities" of States and their property in all kinds of legal procedures and proceedings. Poland also supports convening an international codification conference for the adoption of a universal convention on jurisdiction immunities of States and their property as soon as it would be practicable. It seems that such a conference should be preceded by further satisfactory preparations, taking into account that the best part of that work has already been done by the International Law Commission and the Sixth Committee.

2. The Government of Poland reserves the right to express further more detailed views and opinions on the draft articles during the negotiations to be held before the final adoption of the convention.

II. Specific comments on individual articles

3. The Government of Poland is of the view that article 17, "Effect of an arbitration agreement", of the draft articles adopted by the International Law Commission ought to be completed as was previously suggested by Qatar (see A/CN.4/415, para. 197).

4. Poland supports this suggestion and considers that in subparagraph (c) the words "the recognition and enforcement or" should be added before the words "the setting aside of the award". Adoption of such a suggestion as has been mentioned above could be in conformity with the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958.

5. The Government of Poland does not share the opinion expressed by the Special Rapporteur in his recommendation on this article that the point of Qatar's suggestion seems to be covered by the words "validity" in subparagraph (a) and "arbitration procedure" in subparagraph (b) respectively.